

Amended motion for National Council, December 2020 (F2jV2)

MOTION

Measures to address job insecurity

Motion: National Council

1. Notes that workers in other industries have been able to secure [effective remedies](#) to casualisation including ratios, hard conversion clauses, and immediate conversion of existing casual staff.
2. Believes that a multipronged attack is needed to effectively address the epidemic of casualised and insecure work in the higher education sector.
3. Recommends that claims along these lines be made as part of the next EA bargaining round:
 - a) Clauses restricting casual employment
 - b) Clauses mandating ratios for casual employment
 - c) Controls on outsourcing
 - d) Conversion clauses: Council recommends that branches seek to improve conversion clauses, without relying on them exclusively as a means to address casualisation.
 - e) Mandated conversion of a fixed number of existing casualised workers into permanent positions

RATIONALE

Enterprise agreements which effectively address job insecurity often use more than one mechanism.

EAs should include clauses that:

- restrict casual employment
- mandate ratios for casual employment
- maintain control on outsourcing
- guarantee conversion
- mandate conversion of a specified number of existing casuals

Each of these points is addressed below.

a) Clauses restricting casual employment

Clause 41.1 of the [current RMIT EA](#) has been effective in securing ongoing employment for a dozen or more staff over the past year:

*The parties recognise that casual employment is not in all circumstances an appropriate employment mode or a substitute for fixed term or continuing employment. **The University will***

therefore not use casual employment in circumstances which require significant numbers of hours per week for the conduct of long term regular and systematic work.

b) Clauses mandating ratios for casual employment

The [2009 Swinburne EA](#) contained this clause (9.2.3) which was effective in securing conversion to fixed term and ongoing roles:

The University agrees it shall not increase overall usage of casual staff above the levels for the twelve month period ending 31 March 2009 which based on Swinburne Payroll figures were 21.5% FTE for academic staff.

c) Controls on outsourcing

There are currently no effective controls on outsourcing of professional services (or even teaching) in higher education EAs in Australia. As a result, outsourcing has already seriously reduced the job security of workers in critical roles including cleaning, IT, security, training, and payroll.

Unfortunately, direct prohibitions on outsourcing have been found to be contrary to the Fair Work Act. However, many unions have won controls which have effectively removed much of the incentive for outsourcing as a wage cutting and job insecurity measure.

A Melbourne [distribution centre EA](#) contains this clause (2.6.1):

The Company agrees that work performed by persons who are not directly employed by the Company and would otherwise usually be covered by this Agreement will only be accepted by the Company if those persons who perform the work receive wages and conditions no less favourable than that provided for in this Agreement.

Construction unions have won similar clauses in the past, including clause 52.3 (b) of this [Electrical Trades Union agreement](#):

The Employer will only engage a Third Party to:

- (i) perform Work; and/or*
- (ii) provide labour to perform Work; and/or*
- (iii) source labour to perform Work,*

if the Employer has advised the Third Party by way of their subcontract agreement that they are to pay wages and conditions that are no less favourable than those provided for in this Agreement for the same kind of work.

d) Conversion clauses

The ideal conversion clause has these features:

- No grounds for employers to refuse conversion (eg can't reject conversion on "reasonable business grounds", or due to financial effects of conversion)

- Conversion to employment with full rights (not to some second class category of employment)
- Mandated conversion or offer of conversion after a fixed period of time, without exception (for instance, regardless of whether the worker has gone through a competitive application process, regardless of fraction worked, etc)
- No requirement that the worker apply individually (which can be a big deterrent to those in insecure work)

Construction unions have won strong clauses that meet all these criteria in the past (example [here](#) in section 4). However, most conversion clauses achieved so far in higher education fail to meet any or all of these criteria, and have therefore proved largely ineffective.

For instance, in the last EA round, Sydney's conversion clause was improved to remove the requirement that staff had to be employed at 0.5 fraction in order to apply for conversion, and also removed the requirement that the worker had to have been employed through "a transparent and competitive process" to be eligible (many casuals are not employed in this manner, but have been employed for years). However, the clause still states that management can refuse conversion if "there is insufficient revenue or funding streams to provide continuing support for the staff member's employment". There have been few successful conversions.

e) Mandated conversion of a specified number of existing casuals

RMIT's existing EA provides for 80 Early Career Development Fellows to be created, with a full research fraction, from academics employed as casuals (at RMIT or other universities).

This is a relatively strong clause, but could be strengthened further by

- significantly increasing the number of positions
- mandating that the employment process start immediately upon approval of the EA, with long term casual employees at the start of the queue for permanent employment.

Moved: Katie Wood

Seconded: Liam Ward